



9910-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2012-0179]

RIN 1625-AA09

Drawbridge Operation Regulation; Tombigbee River, AL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to add a special operating regulation governing the Meridian and Bigbee Railroad (MNBR) vertical lift span bridge across the Tombigbee River at Naheola, Marengo and Choctaw Counties, Alabama. The bridge currently remains in the open-to-navigation position and only lowers for the passage of trains. This rule proposes to codify the current schedule as a special operating regulation.

DATES: Comments and related material must reach the Coast Guard on or before [Insert date 60 days after date of publication in the FEDERAL REGISTER.]

ADDRESSES: You may submit comments identified by docket number USCG-2012-0179 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail David Frank, Bridge Administration Branch; telephone 504-671-2128, email David.m.frank@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments

received will be posted, without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2012-0179), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (<http://www.regulations.gov>), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the

"Document Type" drop down menu select "Proposed Rules" and insert "USCG-2012-0179" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2012-0179" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an

agreement with the Department of Transportation to use the Docket Management Facility.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under ADDRESSES. Please explain why a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact David Frank at the telephone number or e-mail address indicated under the FOR FURTHER INFORMATION CONTACT section of the notice.

B. Regulatory History and Information

The Code of Federal Regulations (CFR) under 33 CFR part 117.5 requires that drawbridges open on signal for vessel passage. Prior to this request to change the operating schedule of the draw, no previous requests for changes have been received. The bridge owner has initiated this request without consultation of waterway users but did consult with the USCG Bridge Administration Office in New Orleans to request guidance on how to comply with the requirements of 33 CFR part 117.41.

C. Basis and Purpose

The MNBR vertical lift span bridge crosses the Tombigbee River at mile 128.6 (Black Warrior Tombigbee Waterway mile 173.6), Naheola, Marengo and Choctaw Counties, Alabama. The bridge is currently untended and maintained in the open-to-navigation position, closing only for the passage of rail traffic. The bridge has a vertical clearance of 12.2 feet above ordinary high water (OHW), elevation 64.5 feet is based on the North American Vertical Datum of 1988 (NAVD 88), in the closed-to-navigation position and 55 feet above OHW in the open-to-navigation position. Many of the vessels using the waterway transit under a fixed span of the bridge at periods of lower water due to the difficulty of transiting the navigation span,

which only has a horizontal clearance of 150 feet between piers.

Due to the limited number of trains using the rail line in this area, maintaining the bridge in the fully open-to-navigation position and only lowering the bridge for rail traffic is the preferred operating schedule. Because this operating schedule has been in place for over ten years, and is understood and accepted by local traffic, the bridge owner requested that the Coast Guard publish the current operating schedule. This operating schedule allows vessels to transit the waterway as normal while permitting railroad personnel to lower the bridge for the passage of train traffic after ensuring that no vessels are approaching the bridge.

Maintaining the bridge untended and in the open-to-navigation position also eliminates the need for a bridge tender. This rule proposes to codify the practice and bring it into compliance with 33 CFR part 117.41(b)(1).

D. Discussion of Proposed Rule

Under 33 CFR part 117.5, the MNBR bridge is required to open on signal for the passage of vessels except as otherwise authorized or required. The MNBR bridge is currently untended and operates under a schedule, known and understood by the local users, maintaining the bridge in

the open-to-navigation position and only closing for the passage of rail traffic. That schedule is not reflected in the CFR. This rule proposes to publish the locally known operating schedule, codifying the schedule as a Special Operating Requirement under 33 CFR part 117, Subpart B. The proposed special operating schedule closing the bridge to navigation would occur as follows: when a train arrives at the bridge, the train will stop and a crewmember from the train will observe the waterway for approaching vessels. If vessels are approaching, the vessels will be allowed to pass prior to the bridge being lowered. The crewmember will then make an announcement via VHF-FM channel 16 that the bridge will be lowered. If, after two minutes, no response has been received, the bridge will be lowered for the passage of train traffic. The bridge will remain down until the train has completely passed over the bridge, then the bridge will be raised and the crewmember will announce an "all clear" via VHF-FM channel 16 that the bridge has been raised and left in the open-to-navigation position.

If a vessel approaches while the bridge is in the closed position, they may request an opening by contacting the railroad at a number provided in the regulatory text as

well as on the sign at the bridge or by calling the bridge on VHF-FM channel 16.

E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect the economic impact of this proposed rule to be minimal. This rule proposes to codify the current operating schedule for the MNBR bridge which is already understood, known and accepted by the local bridge and waterway users. Very few vessels will be impacted as the bridge remains open at all times except to allow rail traffic to pass trains two times a day, five days a week.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels wishing to transit the Tombigbee River above mile 128.6 with vessel air drafts that would require the bridge to be open to navigation for them to pass safely through the bridge site. This action will not have a significant economic impact on a substantial number of small entities because the bridge remains open at all times except to allow rail traffic to pass two times a day, five days a week.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that

Order and have determined that it does not have implications for federalism.

6. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

7. Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

8. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

9. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

10. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

11. Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply,

distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

12. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

13. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01, and Commandant Instruction M16475.1D which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

F. List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. §117.118 is added to read as follows:

§117.118 Tombigbee River.

The draw of the Meridian and Bigbee Railroad (MNBR) vertical lift span bridge across the Tombigbee River, mile 128.6 (Black Warrior Tombigbee (BWT) Waterway mile 173.6), at Naheola, shall operate as follows:

(a) The draw shall be maintained in the fully open-to-navigation position for vessels at all times, except during periods when it is closed for the passage of rail traffic.

(b) When a train approaches the bridge, it will stop and a crewmember from the train will observe the waterway for approaching vessels. If vessels are observed approaching the bridge, they will be allowed to pass prior to lowering the bridge. The crewmember will then announce

via radiotelephone on VHF-FM channel 16 that the bridge is preparing to be lowered. If, after two minutes, no response has been received, the crewmember will initiate the lowering sequence.

(c) After the train has completely passed over the bridge, the crewmember will initiate the raising sequence. When the bridge is in the fully open-to-navigation position, the crewmember will announce via radiotelephone on VHF-FM channel 16 that the bridge is in the fully open-to-navigation position.

(d) To request openings of the bridge when the lift span is in the closed-to-navigation position, mariners may contact the MNBR via VHF-FM channel 16 or by telephone at 205-654-4364.

Dated: 17 April 2012

Roy A. Nash
Rear Admiral, U.S. Coast Guard
Commander,
Eighth Coast Guard District

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